IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 303 of 2007

Date of Decision: 16.6.2007

Basti Ram …Petitioner.

Versus.

State of HP & Ors. ..Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Acting Chief Justice.
The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Dalip Sharma, Advocate.

For the Respondents: Mr. M.S.Chandel, Advocate General with
Mr. R.M.Bisht, Deputy Advocate General,
for respondents 1 to 3.

Mr. P.C.Sharma, Advocate, for respondents 5 & 7 to 10.-

D**eepak Gupta, ACJ** (Oral):

The petitioner herein filed a petition under Section 72 read with Section 94 of the H.P.Co-operative Societies Act, 1968 before the learned Assistant Registrar, Cooperative Society, Solan (exercising the powers of the Registrar) alleging that he was a duly elected member of the Managing Committee of "The Mamligh Agriculture Service Cooperative Society". According to the petitioner, respondents No. 5 to 10 in collusion with the Inspector, Cooperative Society, Sairi have fabricated the record of 16.3.2003 and shown that there was fresh election to the Managing Committee. The case of the petitioner was that in fact no election was held on 16.3.2003. According to the petitioner, there was lack of quorum on the said date. The Assistant Registrar, Cooperative Society, after issuing notices to the respondents, set aside the elections. No doubt the

Assistant Registrar while passing the order, has set aside both the elections held on 9.5.1999 in which the petitioner was elected as well as on 16.3.2003 in which the respondents have been elected. He has directed that neither the petitioner nor the respondents could continue to be members of the Managing Committee.

An appeal was filed by respondents 5 to 10 before the Additional Secretary (Cooperative Societies) to the Government of H.P. He has allowed the appeal only on the ground that the elections which were held in 1999 could not have been set aside in proceedings initiated in the year 2003. The Appellate Authority lost sight of the fact that in fact it was the petitioner herein who would have been aggrieved by the order dated 9.5.1999 was set aside but the said order was not challenged.. In fact it was the respondents herein who were aggrieved by the order whereby the elections held in 2003 have been set aside.

The action of the Assistant Registrar could not be said to be beyond limitation as far as the elections of 2003 were concerned. He had come to the conclusion that both, the petitioner as well as the respondents, were not holding the office of the Managing Committee in accordance with the law and directed that fresh elections be conducted. The Appellate Authority while deciding the case has totally lost sight of the aspect of the matter and we have no other option but to set aside the order of the Appellate Authority.

In view of the fact that the society in question was not managed by a duly constituted committee since 1999, we direct that the Registrar, Cooperative Societies, Himachal Pradesh shall ensure that fresh elections to the Managing Committee of the 'Mamligh Agriculture Service Society' are held within a period of three months from today. Since disputes have arisen between two factions of the society and elections may not be possible to be conducted in a conducive manner, we direct that an officer not below the rank of Assistant Registrar shall conduct the elections to the Managing Committee of the Society. The officer so appointed by the Registrar shall fix a meeting of the General

House of the "Mamligh Agriculture Service Cooperative Society" on a date not later than 21st August, 2007. The only Agenda for the meeting shall be the elections to the Managing Committee. The officer so appointed shall ensure that notices are sent to all the Members of the Society for the meeting so fixed so as to reach them at least 15 days prior to the date of the meeting. He shall conduct the elections strictly in accordance with the Act, bye-laws and rules, if any, of the Society.

The writ petition is disposed of with the aforesaid directions. No order as to costs.

(Deepak Gupta), ACJ.

June 16, 2007. (V.K.Ahuja), J.
s.